

BOARD OF APPEALS CASE NO. 5131

BEFORE THE

APPLICANT: Brian Peters

ZONING HEARING EXAMINER

**REQUEST: Special Exception to locate a
motor vehicle repair shop in the AG District;
2107 Waverly Drive, Bel Air**

OF HARFORD COUNTY

Hearing Advertised

HEARING DATE: May 7, 2001

Aegis: 3/21/01 & 3/28/01

Record: 3/23/01 & 3/30/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Brian Peters, is requesting a Special Exception, pursuant to Section 267-53D(3) of the Harford County Code, for a motor vehicle repair shop in an AG/Agricultural District.

The subject property is located at 2107 Waverly Drive, approximately 1.5 miles north of Hickory, and is more particularly identified on Tax Map 34, Grid 3-D, Parcel 262. The subject parcel consists of 1.95± acres, is presently zoned AG/Agricultural, and is entirely within the Third Election District.

Mr. Brian Peters appeared as the Applicant and testified that he is the vice-president of a non-profit organization called Wheels Again, Inc. The witness indicated that Wheels Again takes donated vehicles, repairs these vehicles and brings them to a state where they can be tagged and sold for use by motorists. He proposes to construct a one or two bay repair facility building on his property which would be 24 by 26 feet in dimension and approximately 12 feet high with a pitched roof, bringing the height somewhat closer to 18 feet. He described his property as a 1.95 acre lot, indicated that to the east was open space, to the west was open to Waverly Drive, and that to the north and south of his property were mature pine trees. The witness indicated that his property line is 400 feet from the church lot that is across the road, that he does not propose to have an outdoor lighting operation, only a porch light over the door. He will provide paving and indicated that he will never have more than 3 vehicles stored at one time.

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The witness did indicate that in addition to repairs for wheels again, he will do small automotive repairs on the property. No body work will be performed — this will strictly be mechanical. He indicated that the hours of operation will be 8:00 a.m. to 4:30 p.m. during the week, occasionally he will have operations on Saturday, and there will be no operation of the repair facility on Sundays. He will not work evenings or nights on the property and intends to have no employees. The witness indicated that oils, fluids and other materials will be disposed of in accordance with local law and that parts for use in his business will be delivered by small truck, tools from UPS or Fed Ex or mail, and that vehicles for repair are delivered by tow truck or wrecker. The witness stated that no spray painting of any kind will take place, nor will there be race cars built, stored or repaired on the property. The witness indicated that trash will be picked up by Harford Sanitation Services and that there would be no dumpster. Finally, the witness stated that the proposed structure would likely be frame and block construction that would have a compatible appearance with other structures in the neighborhood.

On cross-examination, Mr. Peters indicated that he will only have three cars at one time and that these vehicles will be stored east or west of the proposed building. The witness also stated on cross-examination that he plans to put a line of trees around the storage area where the vehicles are intended to be kept which will screen from view the cars waiting for repair. There will be no signs or advertising on the property, and he does not propose any separate bathrooms or the addition of plumbing to the proposed structure. Fifty-five gallon drums will be used for oil disposal, and he will not work on race cars. The building is an 18 foot high gabled roof building with open truss construction and there will be a small 6 foot by 16 foot storage area contained within the structure that will be used by the Applicant for storage and an office.

Upon cross-examination by Mr. Dale Myers, a neighbor who lives approximately 1,000 feet from the subject property, the Applicant indicated that cars will be delivered and dropped on Waverly and then they will be pushed up the driveway to the repair facility.

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Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning and indicated that the Applicant's request meets or exceeds all of the requirements of the Code, pursuant to Section 267-53D(3), 267-39C, and further, that the Applicant can meet or exceed all of the "Limitations, Guides and Standards" as set forth in Section 267-9I of the Harford County Code. Mr. McClune indicated that the scale of the facility as proposed is appropriate and similar to other structures in the Agricultural District. Mr. McClune did not feel that any adverse impact would result from the construction of the proposed building or the use proposed by the Applicant within that building. The Department felt that the structure was similar to other garages or barns commonly found in the Agricultural District and further reiterated that no signage be placed on the property advertising the business.

There were a number of protestants who appeared in opposition to the request. The first to testify was Mr. Robert Gibbons who indicated that he was concerned about the appearance of this commercial structure in the neighborhood.

Next, Ms. Lisa Phillips testified that the first house on the drive is the Applicant's and she is very concerned about the impact of the building appearance in that the height of the proposed structure will be 18 feet and will certainly be higher than any other garage or structure in the neighborhood and it will be visibly different than any other structure.

Carolyn Reedy appeared and testified that she also was concerned about the visual appearance of both the commercial structure and the commercial uses and was further concerned about the daily ingress of persons bringing their vehicles for the repair jobs that would come with the motor vehicle repair shop. These would be people that came for oil changes, battery checks, tune-ups or other mechanical work that did not represent the storage of three cars overnight, but would represent a number of daily visits to and from the site.

Mr. Robert Gibbons appeared and testified that, in his opinion, the proposed structure will look terrible in the neighborhood because of its size and commercial nature. He also indicated he was concerned about run-off from the garage because it will go across his property, and further felt that the property of the Applicant was simply too small to accommodate this type of use.

Mr. William Reedy appeared and testified that he was concerned about the unsightliness of the building, that there were no buildings of this type or size anywhere in

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the neighborhood and that this neighborhood was essentially a residential neighborhood, although admittedly the properties were zoned Agricultural.

Mr. Richard Phillips appeared and testified that four children need to walk by his house to the bus stop on Route 1. He is quite concerned about the number of cars that will be coming to and from the motor vehicle repair facility in proximity to the bus stop. He voiced further concern about chemicals and disposal and storage of oils, fluids and other materials used in the motor vehicle repair business. Mr. Phillips indicated that the road is very narrow and he is very concerned about trucks and front end loaders, tow trucks and other traffic particularly with the narrowness of the road and the bus stop and the number of children in the neighborhood.

Mr. Mark McDowell appeared and expressed strong concern that the proposed use of the Applicant was in line with a commercial use and that this was a residential area. He indicated that children use the road daily and a real deficit will be created in this neighborhood if this particular use and structure is permitted. There is a church on Route 1 and a used car lot, but that Waverly Drive consists of 15 to 17 residential houses and the road is only 10-12 feet wide. The witness stated that turning in the driveway would be nearly impossible, so loading and unloading of the cars, as admitted by the Applicant, must necessarily take place along Waverly Drive and this will certainly block traffic and create some obstruction of the roadway for various time periods during the day. Additionally, cars will come and go to the motor vehicle repair facility and he does believe that this will provide impacts that are incompatible with the residential nature of this particular community.

CONCLUSION:

The Applicant is requesting a Special Exception, pursuant to Section 267-53D(3) of the Harford County Code, for a motor vehicle repair shop in an AG/Agricultural District.

Section 267-53D(3) provides:

Motor vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:

- (a) A buffer yard at least 10 feet wide shall be provided along any adjacent road right-of-way or adjacent residential lot.
- (b) The requirements of § 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.
- (c) Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires, and equipment shall be prohibited.
- (d) The operator of the shop shall maintain a log of all vehicles repaired. For each vehicle, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of § 267-39C(7)(f) that each vehicle has been stored on the property for 90 days.
- (e) The rental or storage of trailers, boats, and trucks shall be prohibited.
- (f) Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.
- (g) Materials, textures, colors and designs of fences, walls, and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5 feet wide shall be provided also and shall include trees and shrubs that are at least 2 feet high when planted and that may be expected to form a year-round dense screen within 3 years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening, and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.
- (h) The fumes, odors and noise from the vehicle-related work shall be minimized.
- (i) A minimum parcel area of 1 acre shall be required.

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- (j) In the AG District, the use shall be operated by the resident of the property.

One of the requirements of the Code is that a repair facility comply with the provisions of Section 267-39C(7) of the Harford County Code, which provides as follows:

Motor vehicle filling or service stations and repair shops, in the B2 and B3 Districts, provided that:

- (a) Pumps shall be at least twenty-five (25) feet from all road rights-of-way.
- (b) All portions of the lot used for storage or service of motor vehicles shall be paved with a hard surface.
- (c) No obstructions which limit visibility at intersections or driveways shall be permitted.
- (d) Lighting shall be designed and controlled so that any light shall be shaded, shielded or directed so that the light intensity or brightness shall not adversely affect the operation of vehicles or reflect into residential buildings.
- (e) No motor vehicle filling or service station driveway shall be located less than four hundred (400) feet from the property line of any public or private institutional use, including schools, houses of worship, hospitals, parks or playgrounds.
- (f) Vehicles, except those vehicles used in the operation of the business, may not be stored on the property for more than ninety (90) days.

Harford County Code Sections 267-51 and 267-52 address special exception approval:

§ 267-51. Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.

§ 267-52. General regulations.

- A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.

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- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.**

The Hearing Examiner finds that the Applicant can meet or exceed the specific requirements of the Harford County Code regarding the proposed Special Exception use. However, in regard to the provisions of Section 267-9I, the Hearing Examiner finds as follows:

- (1) The number of persons living or working in the immediate area.**

The Applicant states that he will have no employees.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**

Waverly Drive is a County paved and maintained road, approximately 2200 feet in length. It is straight and flat with good sight distance, serving as access to approximately fifteen (15) residences. The Applicant's property can be seen from US Route 1 and is the first lot on the left or north side of Waverly Drive approximately 1000 feet back from Conowingo Road (US Route 1). The land between the subject property and US Route 1 is actively farmed. Because of the small size of the subject parcel, cars being delivered for repair will be off-loaded on Waverly Drive which will cause traffic to be blocked temporarily. Additionally, deliveries and other vehicles coming and going from repair jobs will increase traffic somewhat on a narrow, local road which serves as the only means of ingress and egress for the residents of Waverly Drive.

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- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

This use is permitted in the Agricultural District with Board approval. There should be no adverse fiscal impacts on the County.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

If all work is to be done in the building and proper containment methods are used for odors, dust, smoke, gas and other fluids, there should not be adverse impacts created in this regard.

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

Police protection will be provided by the County's local Sheriff's Department and the Maryland State Police. Since the property is approximately halfway between Bel Air and Dublin, fire protection will primarily be from both Bel Air and Dublin Volunteer Fire Departments. Water and sewer will be provided by on-site well and septic system. The Applicant will be required to obtain a private hauler to dispose of the trash.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The proposal is recognized by the Code as a use that is compatible with other uses in the AG/Agricultural District.

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

This issue is not applicable to the subject case.

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The proposed use as requested is consistent with the County's Master Plan.

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- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

There are only residential uses on Waverly Drive and several witnesses described the road as closely resembling a drive for a panhandle configuration. Local children use the drive for skating, biking, ball playing and these uses could be jeopardized because of the increased traffic that will be generated by this use at this location. Children using the public school bus stop must walk by this proposed facility and the Hearing Examiner shares the concerns of several of the protestants regarding the safety of pedestrian passersby, particularly younger children not accustomed to Waverly Drive becoming increasingly traveled.

- (10) The preservation of cultural and historic landmarks.

Not applicable to the request.

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted).

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These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

The Hearing Examiner finds that this particular use at this particular location will, in fact, have adverse impacts above and beyond those normally associated with such a use, regardless of its location within the zone. The Agricultural Districts in Harford County normally consist of very large tracts of agriculturally used farmland. In the instant case, this is truly a residential neighborhood. There are no active farms on Waverly Drive and the lots are relatively small. In fact, the Applicant’s lot is only 1.95 acres. While the zoning classification is agricultural, these residential uses do not lend themselves to many of the agricultural uses normally found within the Agricultural District in Harford County. The proposed use by the Applicant is, in fact, more in line with a commercial use which, if these were large tracts of agriculturally used farmland, would likely have little or no material adverse effect on neighboring properties. However, the neighborhood is defined by Waverly Drive and is, in fact, a residentially used, narrow road that is not a through street. Therefore, every resident along Waverly drive must use the road directly in front of the Applicant’s property for all ingress and egress. According to all of the witnesses, including the Applicant, all of the deliveries of vehicles to this property will be by tow truck or loader and will be off-loaded in the street. This will create an obstruction problem in the roadway. Additionally, this is a motor vehicle repair shop and vehicles will come and go to this property on a daily basis, which could create a traffic hazard in this particular area.

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The Hearing Examiner is concerned about these safety factors at this location. Because of the relatively small lot size, residential character and use of all of the properties along Waverly Drive, this neighborhood, while zoned Agricultural, is better described as Rural Residential. The impacts associated with this proposed use must be measured against the actual character and uses found in the neighborhood, which is entirely residential.

In the opinion of the Hearing Examiner, the proposed use will have adverse impacts at this particular location above and beyond those normally associated with such a use elsewhere in the Agricultural zone and is incompatible with the residential uses and character of this neighborhood.

The Hearing Examiner, for the reasons stated herein, recommends that the Applicant's request be denied.

Date JUNE 6, 2001

William F. Casey
Zoning Hearing Examiner